

CHAPTER 6 COMPLAINTS & ALLEGATIONS

BY COUNCIL DISTRICT

The following illustrations analyze complaints and allegations by Council District. The first column in the table lists the Council District¹² and its corresponding Council Member, and also indicates the location where the incidents leading to a complaint occurred. The types of classifications¹³ applied to these complaints were Formal, Informal (IN), Policy (PO), and Procedural (PR) classifications. The Formal classification is subdivided into Civilian-Initiated (CI) and Department-Initiated (DI) complaints, where a Civilian-Initiated complaint is initiated by a civilian versus the Department-Initiated complaint which is initiated by the Office of the Chief. An Informal complaint involves allegations of minor transgressions. At the complainant's request, an Informal complaint can be handled by bringing the matter to the attention of the subject officer's supervisor. A Policy complaint relates to an established policy, properly employed by the officer, which the complainant believes to be inappropriate or invalid. A Procedural complaint is a complaint without a factual basis to support the allegation of misconduct.

A. COMPLAINTS FILED IN 1997

Illustration #7: Complaints by Council District

Council Districts	Formal		IN	PO	PR	Total Complaints	%
	CI	DI					
1 JOHNSON	8	1	2	2	10	23	6%
2 POWERS	6	3	2	3	4	18	4%
3 PANDORI	63	36	15	7	25	146	36%
4 FERNANDES	5	1	2	1	6	15	4%
5 DIAZ	20	4	6	3	12	45	11%
6 FISCALINI	19	4	8	2	5	38	9%
7 SHIRAKAWA, JR.	16	5	6	3	7	37	9%
8 WOODY	12	1	0	0	4	17	4%
9 DIQUISTO	10	2	5	1	10	28	7%
10 DANDO	11	2	3	1	3	20	5%
Unknown/Outside City Limits	4	16	2	0	2	24	6%
Total Cases Received	174	75	51	23	88	411	100%
%	42%	18%	12%	6%	21%	100%	
Cases Closed	98	49	51	23	88	309	

Formal: CI = Civilian-Initiated & DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural

¹² See Appendix F (San José City Council District Map).

¹³ See Appendix G (Classification of Complaints).

Classified complaints account for 411 of the 443 complaints received between January 1 through December 31, 1997. The remaining 32 were awaiting classification as of December 31, 1997. Of those 411 cases, 309 complaints were closed between January 1 through December 31, 1997.

Illustration #8: Three Year Analysis of Classified Complaints by Council District

Council Districts	Time Period Cases Received		
	Jan. - Dec. 1997	Jan. - Dec. 1996	Jan. - Dec. 1995
1 JOHNSON	23	28	31
2 POWERS	18	50	33
3 PANDORI	146	206	143
4 FERNANDES	15	37	24
5 DIAZ	45	59	41
6 FISCALINI	38	67	39
7 SHIRAKAWA, JR.	37	35	41
8 WOODY	17	41	37
9 DIQUISTO	28	28	27
10 DANDO	20	39	27
Unknown/Outside City Limits	24	16	13
Total Cases Received	411	606	456

Illustration No. 8 shows a comparative three year analysis for 1995, 1996 and 1997 classified complaints. The total number of complaints for January through December of 1997 do not include the In-Process complaints. In-Process complaints are complaints that have been initiated, but not yet classified.

B. FORMAL ALLEGATIONS BY COUNCIL DISTRICT

Illustration #9: Formal Allegations by Council District

Council Districts	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Total Alleg.	%
1 JOHNSON	0	0	2	2	1	2	1	1	1	1	11	2%
2 POWERS	0	1	0	3	1	2	1	2	5	1	16	3%
3 PANDORI	3	1	7	43	12	23	13	15	64	4	185	38%
4 FERNANDES	0	0	0	1	1	1	0	1	2	0	6	1%
5 DIAZ	2	0	0	5	3	5	7	1	25	2	50	10%
6 FISCALINI	2	1	2	12	3	8	8	2	17	6	61	12%
7 SHIRAKAWA, JR.	0	0	0	5	9	5	1	1	14	5	40	8%
8 WOODY	0	0	0	5	4	5	3	1	7	1	26	5%
9 DIQUISTO	0	1	0	7	0	7	2	5	9	1	32	7%
10 DANDO	0	0	0	2	1	1	6	3	10	1	24	5%
Unknown/Outside City Limits	0	0	1	11	2	10	0	12	1	2	39	8%
Total Allegations	7	4	12	96	37	69	42	44	155	24	490	100%
%	1%	1%	2%	20%	8%	14%	9%	9%	32%	5%	100%	

Legend	
DH = Discrimination/Harassment	RC = Rude Conduct
ES = Excessive Police Service	UA = Unlawful Arrest
FA = Failure to Take Action	UC = Unofficerlike Conduct
IP = Improper Procedure	UF = Unnecessary Force
MDP = Missing/Damaged Property	US = Unlawful Search

The 249 Formal complaints produced a total of 490 allegations; 19% were sustained, 5% were not sustained, 29% were exonerated, 12% were unfounded, and 35% had no finding. Each complaint may allege multiple instances of allegations. For example, in 1997, there were 102 complaints which alleged 155 counts of unnecessary force allegations. Thus, the number of allegations exceeded the number of complaints. Most of the Unnecessary Force allegations were either exonerated or have a no finding. Most of the Rude Conduct allegations had a No Finding.¹⁴ Most of the sustained cases arose from Improper Procedure and Unofficerlike Conduct allegations.

C. SUSTAINED CASES

Of the 309 closed cases, only 147 Formal cases were of the type where the officer involved could have been disciplined. A finding was reached in 73 cases, of which twenty-two complaints were sustained. The other 74 cases were omitted from Illustration No. 10 because the cases involved non-sworn officers of the SJPD or because the investigations resulted in a No Finding.

Illustration #10: Sustained Cases by Council District

Council Districts	Closed Formal Cases		Sustained Formal Cases	
	CI	DI	CI	DI
1 JOHNSON	2	0	0	0
2 POWERS	2	0	0	0
3 PANDORI	25	10	4	8
4 FERNANDES	1	0	0	0
5 DIAZ	6	2	1	1
6 FISCALINI	6	0	2	0
7 SHIRAKAWA, JR.	6	0	2	0
8 WOODY	1	1	0	1
9 DIQUISTO	2	0	0	0
10 DANDO	4	0	0	0
Unknown/Outside City Limits	1	3	0	3
Total Cases	56	16	9	13

Illustration No. 10 indicates that 9 out of 56 Formal CI closed cases were sustained, which resulted in a 16% sustained rate. By contrast, 13 out of 16 Formal DI closed cases were sustained, a 81% sustained

¹⁴ See Appendix H (Definition of Findings).

rate. The combined sustained rate for Formal CI and DI cases for all the Council Districts is 30%.¹⁵

The allegations and discipline of the sustained cases are as follow:

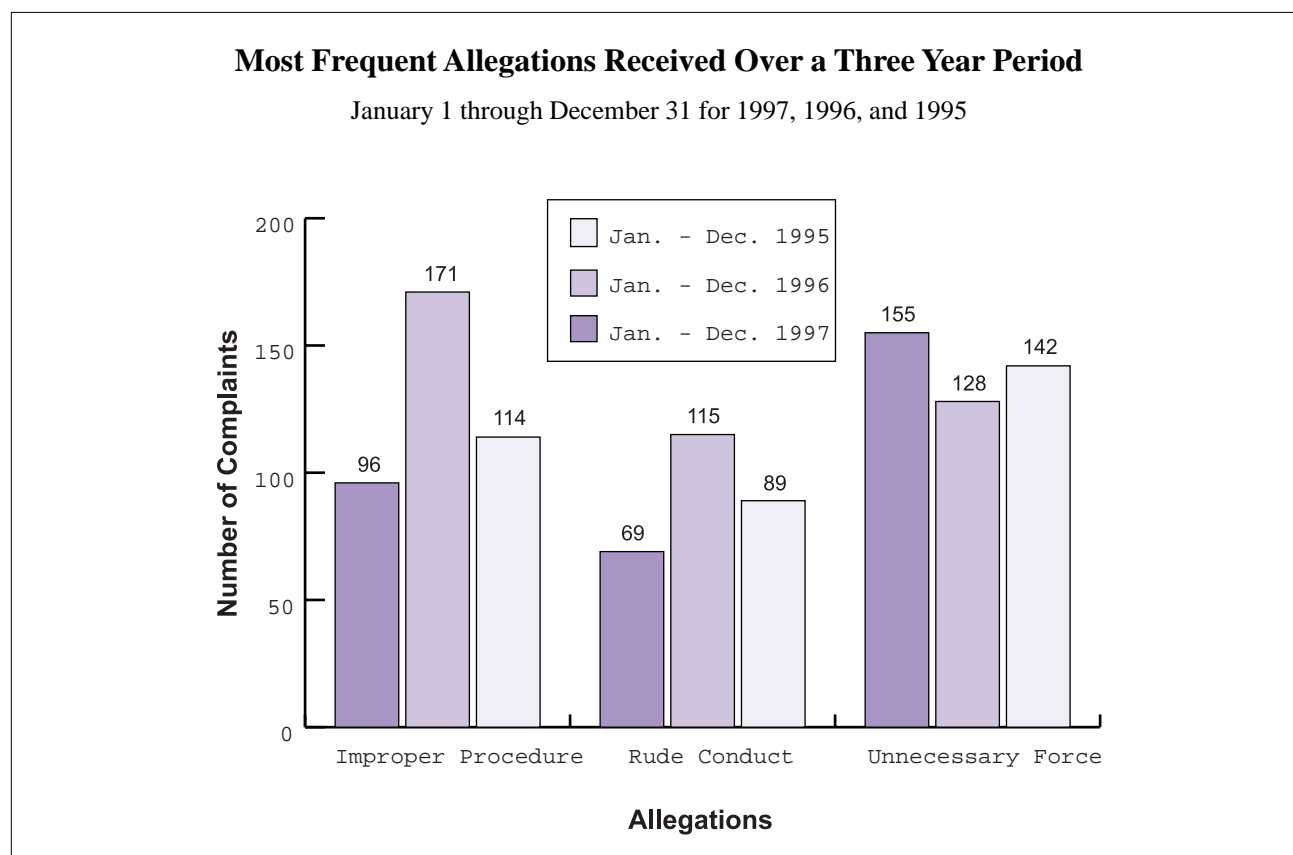
- District 3 had twelve complaints sustained. The allegations for these cases were Improper Procedure, Rude Conduct, Failure to Take Action, Unofficerlike Conduct, and Missing/Damaged Property. The disciplines recommended for these allegations were Letter of Reprimand (L.O.R.), Documented Oral Counseling (D.O.C.), a 10 hour suspension, and a 160 hour of suspension.
- District 5 had two complaints sustained. Both had allegations of Missing/Damaged Property and the disciplines were D.O.C. and L.O.R.
- District 6 had two complaints sustained. The allegations were Improper Procedure and Failure to Take Action. The recommended disciplines were D.O.C. and L.O.R.
- District 7 had two complaints sustained. Both allegations were of Missing/Damaged Property and the disciplines were D.O.C. and Training and Counseling.
- District 8 had one complaint sustained. The allegation was Improper Procedure and the discipline was L.O.R.
- Unknown or Outside City Limit Category had three complaints sustained. The allegations were Unofficerlike Conduct and Improper Procedure. The disciplines imposed were L.O.R., Counseling and Training, and 20 hour suspension.

The most frequently sustained allegations were Improper Procedure (IP) and Unofficerlike Conduct (UC), which were mostly disciplined with a Letter of Reprimand (L.O.R.) or a Documented Oral Counseling (D.O.C.). The Unnecessary Force allegations account for 32% of all 490 allegations received in 1997, yet none were sustained. In 1998, a closer examination will be conducted on the supervisors' compliance with their affirmative duty to investigate officers' use of force.

D. THE MOST FREQUENT ALLEGATIONS FILED

Unnecessary Force (UF), Improper Procedure (IP), and Rude Conduct (RC) allegations consistently yield the highest number of complaints. To compare these three types of allegations in the three year periods of 1997, 1996, 1995, please refer to the following illustration.

¹⁵ The 30% sustained rate was derived from the 22 total sustained cases divided by the 74 Formal closed cases. Informal, Policy and Procedural cases do not have findings. Also excluded are the No Finding investigations.

Illustration #11: The Three Most Frequent Allegations Received Over a Three Year Period

Comparing the 1997 allegations to 1996 and 1995, both the Improper Procedure allegations and the Rude Conduct allegations decreased, Unnecessary Force allegations increased 21% from 1996 and 9% from 1995.

E. ANALYSIS OF UNNECESSARY FORCE COMPLAINTS

There were 249 Formal complaints received from January 1 through December 31, 1997. Of the 249 Formal complaints, one-hundred and two (102) complaints were Unnecessary Force cases, which produced 155 allegations. Use of Force complaints are divided into two categories: Class I and Class II. Class I cases involve those complaints in which the complainants required medical attention for their injuries. Class II cases include those complaints in which the complainant did not require immediate medical care. Of the complaints filed, 44 Use of Force allegations were categorized as Class I cases. The remaining 111 Use of Force allegations were given a Class II classification.

Illustration #12: Type of Force Used, Body Area Afflicted by Use of Force, and Degree of Injury

Type of Alleged UF		Area Afflicted by Alleged UF		Degree of Injury	
Baton	26	Head	43	Major	18
Canines	1	Torso	21	Moderate	19
Car (officer)	13	Limbs	45	Minor	42
Car (complainant)	1	MBP	14	None	12
Chemical Agent	12	Unknown	9	Unknown	11
Gun (officer)	3	Total	132	Total	102
Feet	19				
Ground	16				
Hands	69				
Handcuffs (tight)	10				
Knee	5				
Other	12				
Unknown	5				
Total	192				

Each complaint may allege more than one type of force and body area afflicted by the alleged use of force. The subject officer's use of hands, such as pushing or slapping a complainant, accounted for 36% of the force alleged. The use of a baton for striking or injuring the complainant comprised 14%. This figure more than doubled from last year. The category "ground" includes allegations of being pushed to the ground or being hit/slammed against the ground. The category "Other", which includes the officer's use of a fence, truck, flashlight, garage door, wall, or table, accounted for 6% of the alleged force used.

The "Area Afflicted" by the alleged use of force is divided into five categories: the head, torso, limbs, multiple body parts (MBP), and unknown.¹⁶ The distribution included 33% UF cases which involved injuries to the head, 16% to the torso, 33% to the limbs, 11% to the MBP, and 7% to unknown parts of the body.

The "Degree of Injury" resulting from the alleged use of force ranged from minor to major,¹⁷ and included categories for "none" and "unknown" degrees of injury. The breakdown for these categories were 18% for major injuries, 19% moderate, 41% minor, 12% had no visible injury, and 11% were unknown degrees of injury.

¹⁶ The area of the force alleged is unknown because the case is an open investigation and the area where the force was applied is unclear at the present time.

¹⁷ The degree of the force alleged is unknown because the case is an open investigation and the degree of injury is unclear at the present time. Major injury required medical attention usually arising from the use of baton. Moderate injury generally resulted from the use of chemical agent, canine and tight handcuffs. Minor injury included the description of bruises and cuts from being pushed, grabbed and slapped.